

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CORY J. HANEWINCKEL,)	
)	
Plaintiff,)	Civil No. 07-6103-JO
)	
v.)	<u>ORDER</u>
)	
COMMISSIONER, SOCIAL SECURITY)	
ADMINISTRATION,)	
)	
Defendant.)	

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JONES, Judge:

On June 30, 2008, this court entered an Opinion and Order reversing the Commissioner's decision to deny claimant Corey Hanewinckel's application for disability benefits and remanding the case for further administrative proceedings. The case is now before the court on claimant's motion (# 30) for attorney fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 et seq. As explained below, claimant's motion is allowed in part and denied in part.

DISCUSSION

Claimant seeks an award of \$10,027.05 in attorney fees for work performed in the district court. The Commissioner does not dispute that claimant was the prevailing party and is entitled to recover attorney fees.¹ The Commissioner does, however, object to claimant's request, contending that the total hours claimed are excessive, and that claimant miscalculates the EAJA hourly rate for work performed in 2008.

With respect to the hourly rate, the parties agree that for work performed in 2007, the hourly rate is \$166.46. Claimant proposes an hourly rate for work performed in 2008 of \$173.91; the Commissioner proposes an hourly rate of \$171.44.² The difference between the

¹ The Commissioner does, however, argue that claimant's motion is premature, but the issues are fully briefed and this court finds no reason to delay a decision on the merits.

² The difference is \$2.47 per hour. One would hope that parties could resolve such a (continued...)

two rates results from claimant's use of only the May 2008 Consumer Price Index for All Urban Consumer ("CPI-U") to determine the cost-of-living adjustment in his calculation, while the Commissioner uses the mean CPI-U for January through May 2008. The Commissioner's calculation is the correct one, see Sorensen v. Mink, 239 F.3d 1140, 1148 (9th Cir. 2001), thus, the court will apply a 2008 hourly rate of \$171.44.

With respect to the number of hours incurred, the Commissioner objects that claimant's counsel invested excessive time in reviewing the administrative record (12.5 hours); in drafting the fact section of the opening brief (20.2 hours); and in drafting the argument section (10.4 hours)(a total of 43.1 hours). According to the declaration of lead counsel, Alan Graf, the total hours expended was 51.1; however, the hours set forth in Graf's declaration and the declaration of co-counsel Robert Baron (5.4) total 59.25.

In any event, the Commissioner proposes that a range of 20-40 hours is more appropriate in this type of litigation and suggests a cap of 40 hours for this particular case. After reviewing the file and the opinion of this court, I agree with the Commissioner that the total hours counsel invested in reviewing the administrative record and writing the fact section of the opening brief were excessive. Rather than parse through each entry, I will discount those hours (a total of 32.7) by 20 percent. Taking into account that reduction, I find that claimant is entitled to recover fees for 52.71 hours. Of that total, 6.85 hours were in 2007; 45.86 hours were in 2008. Applying the EAJA rates set forth above, I award claimant attorney fees in the total sum of \$9,002.49.

² (. . . continued)
minor disagreement among themselves.

CONCLUSION

For the reasons stated above, claimant's motion (# 30) for an award of attorney fees is granted in part and denied in part, for a total award of \$9,002.49.

IT IS SO ORDERED.

DATED this 11th day of December, 2008.

/s/ Robert E. Jones
ROBERT E. JONES
U.S. District Judge